

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JOHN S. SHIPLEY, ROCHELLE D. :
SHIPLEY, :
 :
Plaintiffs, :
 :
v. : Civil Action No. 08-341 JJF
 :
NEW CASTLE COUNTY, HERSHAL :
PUROHIT, DONNA THOMPSON, :
 :
Defendants. :

MEMORANDUM ORDER

Plaintiffs, John S. Shipley and Rochelle D. Shipley filed a pro se Complaint on June 9, 2008, requesting "The Federal Court stay the Sheriff Sale and give the Shipleys' [a] opportunity to be heard [and] in the District Court", (Complaint, ¶ 11)

The Complaint states, in paragraph two, it was filed pursuant to "42 U.S.C.S. § 1981, 1982, 1983, 1985 (3) and 1986 - Article 4 of the Fourteenth Amendment and Thirteenth Amendment" based on acts of discrimination related to race.

In paragraph nine of the Complaint, the Plaintiffs assert that the discriminatory acts alleged in this suit concern the Superior Court's denial of Shipley Plaintiffs' trial or hearing on the merits concerning their property. Additionally, Plaintiffs assert they have been denied due process rights under the United States Constitution and the County has filed false statements claiming Shipleys' taxes are not paid which is false.

Attached to the Complaint is a warning of a possible tax monition sale issued on October 11, 2007 and posted on October 18, 2007 by the Sheriff of New Castle County, Delaware for property located at 609 Wildel Avenue, which according to the Complaint is the residence of Plaintiffs.

The Defendants named by Plaintiffs are New Castle County, Herschal Purohit and Donna Thompson.

The Court construes Plaintiffs' request for a stay as a motion for a temporary restraining order and applies the four prong test for the extraordinary relief which lacks notice to the Defendants.

Considering Plaintiffs' allegations as set forth in their Complaint the Court finds that: 1) Plaintiffs have not demonstrated a likelihood of success on the merits of their claim of race discrimination; 2) Plaintiffs have not demonstrated irreparable injury because state law allows for objections to a monition sale to be filed and heard by the Superior Court post sale; and 3) In the circumstances of a monition sale, challenges to the premises of the sale and procedure of the sale alleging a constitutional violation are more appropriately litigated after completion of the state court process.

For these reasons, the Motion For Temporary Restraining Order is **DENIED**.

June 10, 2008
DATE


UNITED STATES DISTRICT JUDGE